

AMENDED IN ASSEMBLY JULY 15, 2003

AMENDED IN SENATE APRIL 23, 2003

SENATE BILL

No. 877

Introduced by Senators Hollingsworth, Battin, Denham, and Knight

February 21, 2003

An act to add Section 1054.10 to the Penal Code, relating to discovery, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 877, as amended, Hollingsworth. Criminal procedure: discovery.

Existing law, added by initiative statute, *controls discovery obligations in criminal cases. In particular, existing law* requires the prosecuting attorney and the attorney for the defendant to disclose to each other specified materials and information in his or her possession, or known to be in the possession of investigators, including, among other things, relevant real evidence seized or obtained as a part of the investigation of the offenses charged. This initiative measure also ~~provides that a court may make any order necessary to enforce its informal discovery provisions~~ *forbids attorneys, their employees, and others appointed by the court to disclose the addresses or telephone numbers of victims and witnesses in a criminal case to a defendant, the defendant's family, or any other person except as required to assist in the preparation of the defendant's case. The initiative measure provides that any amendment of its statutory provisions by the Legislature requires a 2/3 vote of each house.*

This bill would ~~provide that in cases in which the court orders the prosecution to provide~~ *forbid the disclosure of* copies of child pornography evidence to the defense, the court may issue any order it deems appropriate to limit the defense to using that evidence in ways that are reasonably necessary to developing and defending the case. The bill would require the court to give great weight to protecting the identity and the rights of any victim featured in the evidence when drafting orders directing the defense's use of the evidence, while still taking into account the defendant's right to prepare for trial by an attorney to a defendant, members of a defendant's family, or anyone else, except for the attorney's employees or court appointees if required for preparation of the case. The attorney would be required to inform persons provided this material that further dissemination of the material would be forbidden. The bill would thereby amend the initiative measure, requiring a $\frac{2}{3}$ vote of each house.

This bill would declare that it is to take effect immediately as an urgency measure.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1054.10 is added to the Penal Code, to
2 read:

3 1054.10. (a) ~~In cases in which the court orders the~~
4 ~~prosecution to provide~~ *Except as provided in subdivision (b), no*
5 *attorney may disclose or permit to be disclosed to a defendant,*
6 *members of the defendant's family, or anyone else* copies of child
7 pornography evidence to the defense, the court may issue any
8 order it deems appropriate to limit the defense to using that
9 evidence in ways that are reasonably necessary to developing and
10 defending the case. The court may, among other things, subject the
11 attorney to contempt for violation of those orders.

12 (b) ~~The court shall give great weight to protecting the identity~~
13 ~~and the rights of any victim featured in the evidence when drafting~~
14 ~~orders directing the defense's use of the evidence. Any limitations~~
15 ~~imposed by the court shall take into account the defendant's right~~
16 ~~to prepare for trial, including, but not limited to, sharing the~~
17 ~~information with experts employed by the defense attorney or~~

1 ~~appointed by the court.~~, unless specifically permitted to do so by
2 the court after a hearing and a showing of good cause.

3 (b) Notwithstanding subdivision (a), an attorney may disclose
4 or permit to be disclosed copies of child pornography evidence to
5 persons employed by the attorney or to persons appointed by the
6 court to assist in the preparation of a defendant's case if that
7 disclosure is required for that preparation. Persons provided this
8 material by an attorney shall be informed by the attorney that
9 further dissemination of the material, except as provided by this
10 section, is prohibited.

11 SEC. 2. This act is an urgency statute necessary for the
12 immediate preservation of the public peace, health, or safety
13 within the meaning of Article IV of the Constitution and shall go
14 into immediate effect. The facts constituting the necessity are:

15 In order to ~~protect the identities and rights of victims~~ ensure the
16 proper handling of evidence of child pornography, it is necessary
17 that this bill go into effect immediately.

